



# Home Care Association of America

## Connecticut Chapter

### **Senate Bill 467, An Act Concerning Municipal Implementation of Criminal Justice Reforms**

Judiciary Committee

March 23, 2016

The Home Care Association of America was founded on the principle that quality private duty home care has one model of care: to employ, train, monitor and supervise caregivers; create a plan of care for the client; and work toward a safe and secure environment for the person at home. Members of the Home Care Association of America, Connecticut Chapter (HCAOA-CT or the Chapter) employ several thousand caregivers providing quality care to thousands of elderly consumers across the state.

The Home Care Association of America, Connecticut Chapter **opposes** section 2 of Senate Bill 467 concerning employer inquiries about an applicant's criminal history and respectfully requests that the committee strike that section from the bill. At a minimum, homemaker-companion agencies should be excluded from its application before the bill is approved.

Senate Bill 467 would prevent employers from requiring certain employees or prospective employees to disclose any criminal history until the employer has made a conditional offer of employment to the employee or prospective employee. It would effectively bar employers from asking about criminal arrests, charges or convictions until prospective workers have already reached the interview stage.

The bill would prohibit homemaker-companion agencies from denying employment solely on the basis of a misdemeanor arrest, criminal charge or conviction for a misdemeanor if five years have elapsed from the prospective employee's date of release from custody of the Commissioner of Correction or, for a felony, ten years have elapsed from the date of release.

State law requires homemaker-companion agencies to inquire of applicants whether they have been convicted of a crime involving violence or dishonesty. Under the bill, homemaker-companion agencies would be required to make the inquiry but precluded from denying employment solely on the basis of the arrest, charge or conviction – even if the charge was in fact for violence or dishonesty. It is an inherent conflict with state law and policy and puts homemaker-companion agencies in an untenable position with frail, elderly clients.

In Connecticut, the crime of assault of an elderly person is a class B felony subject to a mandatory five-year prison sentence. If an applicant for a caregiver position has recently

completed a five-year sentence for that crime, the employer would be prohibited from denying employment on the basis of that conviction, because the conviction was more than five years old.

Many incidents involving an arrest or charges do not result in conviction of an accused person; some result in a suspended sentence. In either case, such person would not have been placed in the custody of the Commissioner of Correction. Thus, this standard would be wholly ineffective and unworkable for the home care industry.

What elderly person would want to learn that a homemaker-companion agency placed a caregiver into her home that was convicted just over five years ago for assaulting an elderly person? What elderly person would want to learn that a homemaker-companion agency placed a caregiver into his home that was convicted of misdemeanor assault or larceny just over two years ago?

Additionally, homemaker-companion agencies would risk loss of liability insurance if Senate Bill 467 were adopted. Homemaker-companion agencies are required to maintain insurance policies protecting them against dishonest acts. Insurance policies would generally exclude for loss if a caregiver with a prior and recent history of larceny stole from a client after being placed by a homemaker-companion agency that knew about the crime and did not deny employment.

Many homemaker-companion agencies are small business owners operating under franchise agreements. Agreements with the franchisor typically require agencies to inquire about job applicants' criminal history. Homemaker-companion agency franchisees would be in violation of such agreements if Senate Bill 467 becomes law.

Homemaker-companion agencies are in a unique position: they are responsible for placing people in the homes of frail, elderly or disabled persons. Caregivers have access to vulnerable people and their money.

Current law and the bill allow an employment application form that contains criminal history record information of a job applicant to be made available to professionals who have access to client funds, such as broker-dealers, investment advisers and insurance producers, for obvious reasons. The bill adds certain law enforcement officers and investigators as well as employees of local or regional boards of education to persons who would not be exempt. Homemaker-companion agencies, for similar and perhaps more important reasons, should also be able to have and use such information about prospective employees.

The Judiciary Committee should reject section 2 of Senate Bill 467. However, if the committee approves the bill, homemaker-companion agencies should be exempt or excluded from its application.

Please contact David L. Denvir, President of the Home Care Association of America, Connecticut Chapter, at (800) 348-4663, ext. 7799 for any questions or additional information.